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IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ANTONY ALEXANDER BLAREK II, AND
FRANK V. PELLECCHIA,
Petitioners,

--against--

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Are interior designers and decorators who provide decorating services to a leader of the Colombian drug cartel guilty of conspiracy to participate in the leader's narcotics trafficking enterprise if they know that money they have received from their client to make decorating purchases and in compensation for their services is or may be narcotics-related?

2. In light of this Court's decisions in Reves v. Ernst & Young, 507 U.S. 170 (1993), and United States v. Salinas, 118 S. Ct. 469 (1997), what must a person agree to or do to be criminally liable for conspiracy to violate 18 U.S.C. § 1962(c), and which (if any) of the Circuits' conflicting views on the scope of conspiratorial liability under RICO is correct?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Antony Alexander Blarek II and Frank V. Pellecchia petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Second Circuit has been designated a summary order not for publication; it is reproduced in the Appendix at App.1.

JURISDICTION OF THIS COURT

The judgment of the Court of Appeals was filed on December 23, 1998. This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Pursuant to Rule 14(1)(f) of the Supreme Court Rules, and because they are lengthy, the statutes at issue are set forth verbatim in the Appendix, at App. 8 to App. 18.

STATEMENT OF THE CASE

Petitioners Antony Alexander Blarek II and Frank V. Pellecchia, interior designers and decorators, were charged with conducting and participating in the affairs of the Santacruz faction of the Cali drug cartel, and conspiring to do so, in violation of 18 U.S.C. §§ 1962(c) and 1962(d).[1] (App. 8-9)

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[1] Both were also charged with (and convicted of) conspiring to launder monetary instruments in violation of 18 U.S.C. §§ 371 and 1956(h); and Petitioner Blarek was charged

Following a jury trial in the Eastern District of New York, they were acquitted of the substantive RICO count, but convicted on the RICO conspiracy count.[2]

The historical facts were largely undisputed; what was disputed was the defendants' intentions and the legal consequences of their acts. In 1979, Blarek, a successful interior designer living and working in the Miami area visited Cali, Columbia with a fellow designer who had relatives in that country. There, having admired a particularly impressive house that was under construction, they met its owner, Jose Santacruz Londono, and his wife, Amparo. Following this and several other meetings, Blarek and his friend were retained to develop a plan to decorate the house being built. After further discussions, and a scaling down of the budget at Santacruz' request, they were retained to execute the plan, selecting and purchasing furnishings and fabrics from a variety of vendors, arranging for delivery, and supervising installation. Blarek and his friend made a profit or commission well within the range of 25 percent to 40 percent that is standard for designers.

In 1981, Santacruz contacted Blarek and retained him to design a new office for him in Cali. At around the same time,

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with (and convicted of) a single count of traveling in interstate commerce with intent to distribute the proceeds of a narcotic enterprise and distributing such proceeds, in violation of 18 U.S.C. § 1952(a)(1).

[2] Departing downward from the applicable sentencing guidelines, the district court sentenced Blarek to 68 months and a fine of over $300,000, and Pellecchia to 48 months imprisonment. Pursuant to a stipulation of settlement with the government, forfeitures were ordered which, with the fine, appropriated to the government virtually the entire net worth of the Petitioners.

Petitioner Pellecchia became Blarek's business and life partner. From that point on, the two of them worked together on a number of design projects for Jose Santacruz, including an apartment for Santacruz' wife in Bogota, several apartments in Cali for use by the family and its guests, and a number of homes and apartments for two of Santacruz' mistresses. For these projects, Blarek and Pellecchia conceived designs, made drawings, selected fabrics, draperies, and accessories, retained vendors and craftsmen to execute their designs, consulted with architects, and traveled to Colombia to supervise installation and finishing. They received typical, that is, substantial, fees or commissions as designers, and functioned in ways that were entirely normal for design and decorating professionals.[3] Their work was of the highest quality, and they continued to work as "decoradores" for Santacruz.

From 1986 through 1990, they worked on a ranch house being constructed for Amparo Santacruz, and from 1991 on, an extensive expansion and renovation of the original house in Cali. The last project was not completed because Santacruz was arrested by the Colombian authorities, and was later killed in a shootout with police.

Santacruz had been a large scale narcotics trafficker. In fact, he was one of the most important figures in the Colombian cocaine cartel, about which DEA agents and former members of his narcotics operation testified at trial. There was also evidence at trial that at some point, the Petitioners knew or had reason to believe that Santacruz was involved in the narcotics trade. Indeed, in 1981, DEA agents advised Petitioner Blarek that Santacruz was involved in drug trafficking, and in 1991

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[3] For example, they hid the true identity of their client from vendors with whom they dealt, a common practice with clients who are rich or famous, and they kept track of projects by assigning project numbers to them rather than client names.

Santacruz' picture appeared on the cover of Time magazine, where he was depicted as the head of the Cali cartel.

The indictment upon which the Petitioners were tried charged that the Petitioners themselves conducted and participated in the conduct of the affairs of the Santacruz Faction of the Cali Cartel -- which was named as the racketeering enterprise -- through a pattern of racketeering activity and, in a separate count, that they conspired to do so. The indictment set forth 154 racketeering acts, as part of both the substantive and RICO counts. The predicate acts charged included laundering of monetary instruments (18 U.S.C. § 1956(a)(1)(B)(i)); engaging in transactions in drug proceeds in excess of $10,000 (18 U.S.C. § 1957); and interstate travel in aid of racketeering activity (narcotics trafficking) (18 U.S.C. § 1952(a)(1) and 21 U.S.C. §§ 846, 841). All of these predicate acts involved Petitioners' (1) receipt of money from Santacruz or others acting on his behalf – either in cash or by wire transfer from banks which were, for the most part, outside the United States; (2) purchase of goods and services for Santacruz for the various design projects, either with cash or by check; (3) deposit of checks or the writing of checks to pay for goods and services related to the various design projects; and (4) travel in interstate commerce to make purchases in connection with those design projects.

In support of the charges, the government introduced evidence at trial that, over the course of years during which Santacruz was their client, the Petitioners had, on a number of occasions, received monies, and had spent it, in connection with the design projects they had been retained to execute, and had been paid by Santacruz for the design services that they had provided. In attempting to bring these activities within RICO and to state claims against the two designers for RICO offenses, the indictment alleged that Santacruz "wished to ... utilize the vast sums of illegal drug proceeds" his narcotics operation generated. The indictment characterized this as an objective "of

the racketeering enterprise" itself, and alleged that the defendants furthered this objective by their actions. (Superseding Indictment ¶ 14) The indictment made it sound like the defendants utilized drug proceeds to further drug activities, even though every penny they spent was a penny forever removed from the drug trade. This was a prosecution for helping someone spend his money on non-narcotics-related activities.

The defense at trial was that Petitioners' provision of professional services to Santacruz, including the purchasing of high end furnishings and household goods for him, were intended to further -- and did further -- only Santacruz' personal consumption goals, not the goals of the narcotics trafficking operation which he headed and which was the RICO enterprise. Accordingly, it was their position that they were not guilty of a substantive crime under RICO, or of RICO conspiracy.

The jury, however, convicted on the RICO conspiracy count, though it acquitted on the substantive charge.

On the appeal, defendants argued that, as a matter of fact and of law, the evidence was not sufficient to establish their liability, as conspirators, under RICO. As they had argued at trial, they urged that the evidence established only that they furthered and intended to further the personal consumption goals of Santacruz by assisting him to satisfy his taste, and the desires of his wife and mistresses, for luxury items and other voluptuary pleasures. They argued that, even if they engaged in proscribed financial transactions involving narcotics proceeds or otherwise violated federal law in catering to Santacruz' personal consumption activities, they could not be found guilty of conspiring to conduct or participate in the conduct of the Cali cartel's narcotics trafficking, as charged.[4]

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[4] Defendants also argued that prejudicial spillover from the invalid RICO conspiracy conviction tainted the convictions

The Court of Appeals for the Second Circuit affirmed the convictions by unpublished summary order. The Court "disagreed" with the defendants' position that they did not conspire with Santacruz but instead merely assisted him with his personal consumption. In explaining its disagreement, the Court stated:

> There is considerable evidence in the record to show that the Appellants knew Santacruz was a drug dealer and that the money they were spending for him was drug money. Moreover, the size and manner of the cash transfers to Blarek and Pellecchia, not to mention the surreptitious conduct of the designers concerning their transactions with Santacruz, could all amply support the inference that the Appellants conspired with Santacruz to aid his enterprise's drug business through money laundering.

(App. 5) Petitioners seek review on certiorari of an important question this case presents.

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on the other counts. The Court of Appeals, finding the RICO conspiracy conviction valid, found the spillover argument meritless. Although the Petitioners raise, in this Court, only a challenge to the RICO conspiracy count, they submit that, if they are entitled to a remand on the RICO conspiracy count, the entire case should be remanded for consideration of the validity of the convictions on the other count or counts.

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES, IN A COMPELLING FACTUAL CONTEXT, A QUESTION CONCERNING THE SCOPE OF CONSPIRATORIAL LIABILITY UNDER RICO THAT HAS VEXED AND DIVIDED THE FEDERAL COURTS

This case raises a fundamental question concerning the scope of conspiratorial liability under RICO. The question is whether a person may be guilty of conspiracy to participate in a narcotics enterprise, and thus guilty of conspiracy to violate RICO, by helping the head of that enterprise spend his money on non-narcotics-related activities. This case thus presents, in a compelling factual context, a question that has divided and vexed the federal Courts of Appeals.

To be liable for RICO conspiracy, what (if anything) must the defendant do or agree to? The answer to that question determines who among the persons who may have some connection to, or dealing with, a racketeer or racketeering enterprise can properly be charged with RICO conspiracy. It also determines what the jury must be instructed to find (and must find) in order to convict; and whether a guilty verdict is supported by legally sufficient evidence. Yet, the question is one on which the Circuits are sharply split.

RICO's key substantive provision makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity ...." 18 U.S.C. § 1962(c). (App. 8) Section 1962(d) renders it unlawful to conspire to violate that section. The essence of a conspiracy is, of course, an agreement. But

what is the nature of the criminal agreement where RICO is concerned? And what, if anything, must an individual do or agree to in order to himself become liable for RICO conspiracy. Because RICO has several layers, the answer is far from obvious. The federal courts have taken varying approaches and reached conflicting results, giving rise to opportunities for forum-shopping.[5]

In United States v. Neapolitan, 791 F.2d 489, 499 (7th Cir.), cert. denied, 479 U.S. 940 (1986), the Seventh Circuit provided an early answer in an expansive and scholarly treatment of the question:

> From a conceptual standpoint a conspiracy to violate RICO can be analyzed as composed of two agreements (in reality they would be encompassed by the same manifestations of the defendant): an agreement to conduct or participate in the affairs of an enterprise and an agreement to the commission of at least two predicate acts. Thus, a defendant who did not agree to the commission of crimes constituting a pattern of racketeering activity is not in violation of section 1962(d), even though he is somehow affiliated with a RICO enterprise, and neither is the defendant who agrees to the commission of two criminal acts but does not consent to the

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[5] In fact, 3500 material produced in this case revealed that the Drug Task Force in San Francisco declined to prosecute this case because a conviction was thought to be "extremely unlikely." As demonstrated infra, under Ninth Circuit law, defendants would not be guilty of RICO conspiracy. The law in the Second Circuit is different and that is where this case was brought, although the Petitioners' contacts with the Eastern District of New York were minimal.

> involvement of an enterprise. ... If either aspect of the agreement is lacking then there is insufficient evidence that the defendant embraced the objective of the alleged conspiracy. Thus, mere association with the enterprise would not constitute an actionable § 1962(d) violation. In a RICO conspiracy, as in all conspiracies, agreement is essential.

(citations and footnote omitted)

Not all courts followed the Seventh Circuit's analysis, and several Circuits, including the Second Circuit, construed the statute more narrowly and required that defendants personally agree to commit two or more racketeering acts. See United States v. Sanders, 929 F.2d 1466, 1473 (10th Cir.), cert. denied, 502 U.S. 846 (1991); United States v. Ruggiero, 726 F.2d 913, 921 (2d Cir.), cert. denied, 469 U.S. 831 (1984); United States v. Winter, 663 F.2d 1120, 1136 (1st Cir. 1981), cert. denied, 460 U.S. 1011 (1983).

Following this Court's 1993 decision in Reves v. Ernst & Young, 507 U.S. 170 (1993), a number of courts re-examined conspiratorial liability under RICO. Reves addressed the scope of "outsider" liability for substantive RICO crimes under § 1962(c) -- in that case the liability of accountants. Adopting a narrow construction of the statute based on the plain meaning of the statute and its legislative history, Reves held that § 1962(c) reaches only those who "participate in the operation or management of the enterprise itself." 507 U.S. at 185. Specifically, the Court concluded that the term "conduct" as used in § 1962(c) required that the defendant be found to exercise "some degree of direction" over the enterprise, and that the word "participate" required "some part in that direction." Id. at 178, 179. Accordingly, this Court affirmed the lower court's view that an accounting firm, engaged in the valuation of a farming

cooperative based on yearly audits and financial statements, could not be held civilly liable to the cooperative's note holders under § 1962(c) upon the cooperative's filing for bankruptcy. Id. at 186. The Reves Court indicated that "liability under § 1962(c) is not limited to upper management," but declined to decide "how far § 1962(c) extends down the ladder of operation." Id. at 184 & n.9.

The federal courts have divided on the question whether Reves' "management or control" test likewise applies to the crime of RICO conspiracy. The Seventh Circuit, the first Court of Appeals to consider the question, concluded that Reves did not change the law of RICO conspiracy. In United States v. Quintanilla, 2 F.3d 1469, 1484-85 (7th Cir. 1993), it held that RICO conspiracy requires "only an agreement to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity." Under this approach, "it is only necessary that the defendant agree to the commission of two predicate acts on behalf of the conspiracy." Id. at 1484 (emphasis added). The Second Circuit agreed with the Seventh that Reves did not alter the law of RICO conspiracy. Adhering to its previous position (but purporting to rely on Neopolitan), it held that, to be guilty of RICO conspiracy, defendant must have "'embraced the objective of the alleged conspiracy' and agreed to commit two predicate acts in furtherance thereof." United States v. Viola, 35 F.3d 37 (2d Cir. 1994), cert. denied, 513 U.S. 1198 (1995), quoting Neapolitan, 791 F.2d at 499.

The Third Circuit, the next Court of Appeals to consider Reves' impact on RICO conspiracy, saw the matter quite differently. Disagreeing with both the Seventh and the Second Circuit that Reves had no effect on conspiratorial liability, the Third Circuit recognized that "courts risk eviscerating Reves by blanketly approving conspiracy convictions when substantive convictions under 1962(c) are unavailable." United States v. Antar, 53 F.3d 568, 581 (3d Cir. 1995). The Court noted the

force of the argument that, "If Congress' restriction of section 1962(c) liability to those who operate or manage the enterprise can be avoided simply by alleging that a defendant aided and abetted or conspired with someone who operated or managed the enterprise, then Reves would be rendered almost nugatory." Id., quoting David B. Smith & Terrance G. Reed, Civil Rico, § 5.04 at 5-39 (1994). Striving to avoid eviscerating Reves, the Third Circuit concluded:

> [A] distinction can be drawn between, on the one hand, conspiring to operate or manage an enterprise, and, on the other, conspiring with someone who is operating or managing the enterprise. Liability under section 1962(d) would be permissible under the first scenario, but, without more, not under the second. ... The distinction we draw derives directly from 18 U.S.C. § 1962(d) which provides that it is "unlawful for any person to conspire to violate" sections 1962(a), (b), or (c).

Id.

In United States v. Starrett, 55 F.3d 1525 (11th Cir. 1995), cert. denied, 517 U.S. 1111 (1996), the Eleventh Circuit, without analysis and without mention of Antar, opted to follow the Second and Seventh Circuit's approach, and affirmed a RICO conspiracy conviction along with a conviction for the substantive RICO offense.[6]

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[6] More recently, however, the Eleventh Circuit approved a jury instruction that permitted a RICO conspiracy conviction if the jury found that the defendant "agreed to conduct or to participate in the affairs of the enterprise either by agreeing personally to commit at least two predicate acts or by agreeing to the overall objective and knowing that others were conspiring

The Ninth Circuit, however, in a civil RICO case, has joined the Third in recognizing the impact of Reves, and requiring more: "We have defined conspiracy in the RICO context as an agreement to conduct or participate in the affairs of an enterprise and an agreement to the commission of a least two predicate acts. To uphold the verdict, after Reves, there must have been "substantial evidence that defendant agreed to have 'some part in directing [the enterprise's] affairs.' ... Evidence that [the defendant] knew of ... the scheme, benefitted from the scheme, or even conspired with Fletcher to violate the tax code would not be enough." Neibel v. Trans World Assurance Co., 108 F.3d 1123, 1128 (9th Cir. 1997), quoting Neapolitan, 791 F.2d at 499.[7]

Most recently, the Fifth Circuit, announcing that it was following the Second and Seventh Circuit's lead, held that, to prove a RICO conspiracy, the government must establish (1) that two or more people agreed to commit a substantive RICO offense, and (2) that the defendant knew of and agreed to the overall objective of the RICO offense. United States v. Posada-Rios, 158 F.3d 832 (5th Cir. 1998). The Fifth Circuit found support for this position in this Court's decision in United States v. Salinas, 118 S. Ct. 469 (1997), which repudiated the notion that, to be liable for RICO conspiracy, a defendant must have

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to participate in the same enterprise through a pattern of racketeering." United States v. Brazel, 102 F.3d 1120 (11th Cir.), cert. denied, 118 S. Ct. 79 (1997).

[7] The District of Columbia Circuit recognized the split in the Circuits, but declined to take sides, reasoning that the conviction under review would be valid under either approach. See United States v. Thomas, 114 F.3d 228 (D.C. Cir.), cert. denied, 118 S. Ct. 635 (1997). The question is still an open one in that Circuit. See United States v. Hoyle, 122 F.3d 48, 50 n.3 (D.C. Cir. 1997), cert. denied, 118 S. Ct. 1335 (1998).

agreed that he would himself commit two predicate acts. Salinas emphasized that normal conspiracy principles apply to RICO conspiracies, and explained that

> A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion.

Id. at 477 (emphasis added).

In Petitioners' case, the panel on appeal focused on evidence tending to show Petitioners' knowledge of Santacruz' drug activities[8] and quoted the underlined language from Salinas, suggesting that that provided the standard for assessing the validity of the convictions in this case. Salinas, however, does not address the pre-existing split in the Circuits regarding the significance of Reves. Beyond making clear that the defendant need not agree to commit predicate acts himself, Salinas sheds little light on what it is the defendant must do or agree to. Salinas' "intend to further" or "adopt the goal" language could be read to support the proposition that a RICO defendant need not agree to anything so long as an agreement, among or between

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[8] A person's knowledge of illegal activity does not make him guilty of conspiracy to engage in that activity, even if his actions further the object of a conspiracy. See United States v. Falcone, 109 F.2d 579 (2d Cir.), aff'd, 311 U.S. 205 (1940) (sale of sugar to illicit distillers). In the words of Learned Hand, "[H]e must in some sense promote their venture himself, make it his own, have a stake in its outcome." 109 F.2d at 581.

others, existed, with which he associated himself in some way.[9]

If that is what Salinas means, then Reves is of little significance. Reves' recognition that substantive RICO casts a relatively small net is of little moment if RICO conspiracy -- a crime just as serious as the substantive offense -- casts an enormous one. Petitioner submits that the Third and the Ninth Circuits were, therefore, correct in holding that Reves operates to limit conspiratorial liability under RICO too. Salinas' holding – that an alleged conspirator need not himself have agreed to commit at least two predicate acts – and its reliance on general conspiracy principles in reaching that conclusion certainly do not compel a contrary result.

As argued in the Court below, evidence that Petitioners agreed to conduct the affairs of the Santacruz faction of the Cali cocaine cartel – that is, to manage or direct its affairs – was woefully lacking. The evidence of Petitioners' lack of involvement in the actual operation of any part of the Cali drug cartel is overwhelming and undisputed, and came from the government's witnesses as emphatically as from Petitioner Blarek himself. Indeed, the idea that these two interior decorators conspired to play such a role is laughable. Under the rule of law that exists in the Ninth and Third Circuits, Petitioners' RICO conspiracy convictions could not stand; the government has never claimed otherwise.

Even if there were no conflict in the Circuits, or Salinas itself could be read to define the requisites for conspiratorial liability under RICO, the law in this area would still be in dire

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[9] Even under this test, Petitioners' convictions could not stand because, as a matter both of fact and law, they did not "intend to further" or "adopt the goal" of Santacruz or Santacruz' narcotics operation by helping Santacruz spend his money on non-narcotics-related goods and activities.

need of clarification, as this case shows. Petitioners submit that, as a matter of law, they are not guilty of conspiracy to violate the racketeering law. As they argued below, RICO does not make a person guilty of conspiring to conduct a narcotics trafficking enterprise like a branch of the Cali Cartel when they furnish its leader with expensive goods and services, unrelated to drug activities, for the leader's personal consumption and enjoyment. The personal consumption goals of Santacruz, as the enterprise's head, are certainly not the same thing as "the operation or management of the enterprise itself." See United States v. Jackson, 935 F.2d 832, 841 (7th Cir. 1991) (distinguishing purchases for the purposes of maintaining defendant's lifestyle from purchases intended to promote continuing criminal enterprise.) Assisting or facilitating the leader's achievement of those goals thus does not further the criminal endeavor, and cannot make one a RICO conspirator.

The government attempted to elide that problem in the courts below by urging that the provision of these goods and services was, in fact, money laundering, which was an important component of the drug trafficking operation. And the Second Circuit appears to have accepted that claim, concluding that the evidence "support[s] the inference that the [Petitioners] conspired with Santacruz to aid his enterprise's drug business by money laundering." (App. 5) This facile assertion cannot validate the convictions.

First, the case as presented to the jury, did not limit the government's theory in this way. On the contrary, the government repeatedly argued to the jury that facilitating Santacruz' lavish lifestyle was itself the critical contribution to the enterprise being laid at the defendants' door. (Tr. 26, 1724-25, 1849-50) The trial court itself understood this to be the government's theory, commenting, at the close of the government's case that "[i]n the case of a major drug person of this kind maintaining this elaborate prince-like series of

establishments is part of the operation of the drug lord." (Tr. 1285)

Second, the actual facts of the case belie the claim that the consumption-related activities in which the defendants participated facilitated Santacruz' export of drug profits from the United States to Colombia. Most of the money delivered to the defendants after enactment of the money laundering statutes did not consist of cash generated in the United States, but of wire transfers from outside this country. This money had already been laundered and exported, and bringing it back to the United States to be spent on furnishing Santacruz' residences could not have furthered any money laundering aspect of the Cartel's operation. It could only have furthered Santacruz' personal efforts to spend his wealth, and his efforts not to put it back into his enterprise.

Third, the evidence in the case showed that Santacruz had an elaborate apparatus to launder the cash generated by his drug activities: a five stage written plan, created by a Harvard-trained economist, to export hundreds of millions of dollars in cash and launder it through banks and shell companies in South America and Europe. The purchase of luxury goods in the United States and Europe to furnish residences for his wife, his children, and his mistresses, was not part of that plan, or of the money laundering aspect of the Cali drug cartel. Besides, defendants' activities on behalf of Santacruz made no sense as a way of transporting assets to Colombia, for several reasons. Defendants charged too much to function as money launderers. The evidence in this case showed that professional money launders charged fees of four to ten percent; defendants charged a 30 percent commission for their services, standard charges for the services of designers, but far too much to pay to have money laundered. Moreover, that Santacruz' spending was just that, and was not a way to launder drug money, is evident from the expenditures themselves. The most expensive furnishings

designed or selected by the defendants were custom-designed items such as cabinetry and personalized dinnerware that contributed to Santacruz' personal enjoyment, but had little if any resale or asset value.[10]

Finally, the actual verdict the jury rendered refutes the claim that the jury convicted because it had found that the defendants engaged in "money laundering."[11]

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[10] Besides, the entire sum of money involved – less than $8 million over a 15 year period -- was insignificant as compared to the sums involved in Santacruz drug activities. The record reflects that during this period, Santacruz' employees would typically collect a "few million dollars" per week from a single one of his four American operations. (Tr. 141-42)

[11] The jury was charged that, to convict a defendant of substantive RICO, it had to find that there was an enterprise; that the defendant conducted or participated in the conduct of its affairs at some managerial level; that he participated though a pattern of racketeering activity; and that he committed at least two predicate acts within ten years of each other. (Tr. 1879-83) On the RICO conspiracy count, the jury was charged that, to convict, it must find that the defendant agreed to participate in the operation or management of the affairs of the enterprise in the same manner charged in the substantive RICO count, but that he need not have personally committed or agreed to commit any racketeering acts. (Tr. 1908)

In light of these instructions, and the jury's acquittal on the substantive count, it appears that the jury concluded that the defendants did participate in the operation or management of the affairs of the enterprise in the manner that Reves required, but that they did not commit racketeering acts. Accordingly, the jury's verdict would not permit affirmance of the conviction on the grounds that the evidence was sufficient to show that the

If Blarek's and Pellecchia's activities constituted money laundering, then money laundering has been redefined to include all market transactions between those who lead criminal enterprises and those who provide lawful goods and services to them. If that is so, then thousands of doctors, dentists, merchants and other business people and professionals are in serious jeopardy.

Petitioners therefore ask the Court to consider what the crimes of RICO conspiracy is, so that the sufficiency of the evidence can be tested against the proper legal standard. Evaluation of whether the evidence was legally sufficient to support the conspiracy conviction cannot even begin without a clear statement, permitting a clear understanding, of what it is the government must prove to establish that offense.[12]

Uncertainty and the opportunity to forum shop will continue until this Court rules. Even if Petitioners' position is to be rejected on the merits, this Court should do that sooner rather than later so that citizens will have notice of the activities and relationships which place them at risk. The court system, too, will benefit from prompt resolution of the question. Several Circuits have yet to decide whether Reves affects RICO conspiracy prosecutions. Cases brought in those districts will be conducted in an atmosphere of uncertainty, where the government, the defendant, and the court will have to guess what the operative law is.

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defendants aided the enterprise's drug business by committing two or more money laundering offenses. The jury seems to have found otherwise.

[12] If this Court agrees that the standard used by the Second Circuit was wrong, the appropriate remedy would be a remand.

Petitioners' case, which has been widely reported in the press, is an ideal one in which to consider the issue, for their situation puts the issue into stark focus, and their conviction leaves large numbers of professionals and other providers of goods and services at risk. Can a caterer cater the wedding of the daughter of an organized crime chief, or, in doing so, does she risk becoming part of a RICO conspiracy? Are lawyers or physicians at some risk when they provide professional services to such a client?[13]

Petitioners' defense at trial, and the primary thrust of their appeal, was that they agreed to, and did, provide professional design and decorating services to Jose Santacruz. The evidence, in the light most favorable to the government, showed that they did so even after they learned that he was a drug dealer, and knew that monies they were being paid for their services and for the home furnishings and related items they purchased on his behalf, may have come from drug dealing. In doing so, however, as the jury determined when it acquitted them of the substantive RICO charge, they did not manage, operate, or control the illicit enterprise that he headed, "the Santacruz Faction of the Cali Cartel." Nor, Petitioners submit, could they properly be convicted for conspiring to violate RICO.

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[13] Petitioners' "contribution" to the RICO enterprise is far more attenuated than the contribution made by a doctor or lawyer who renders services to a racketeer. If the doctor cures or the lawyer successfully defends the chief of a narcotics enterprise, he effectively puts the crime chief back into business. Petitioners did not facilitate the drug business at all, but only helped the criminal spend his money in a way that took it out of the narcotics business.

CONCLUSION

For the above-stated reasons, Petitioners respectfully request that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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